IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 842 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MOHAMADBHAI GANIBHAI SAIYED THRO.BROTHER HANIFBHAI G SAIYD

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 842 of 2004

MR SHAKTISINH GOHIL for Petitioner No. 1

MS P B SHETH AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 2

MS PJ DAVAWALA for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 26/03/2004

ORAL JUDGEMENT

The petitioner above named has preferred this petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing and setting aside an order dated 26/12/03, passed by respondent no.2 herein, for detaining the detenu u/s.3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

2. It was alleged against the petitioner that the petitioner was granted licence for running a Fair Price Shop and that on inspection of the said shop on 03/09/03, certain irregularities were noticed, and therefore, after following the procedure, the petitioner was ordered to be detained under the impugned detention order.

3. The petitioner has challenged the above order of his detention on various counts. It has been contended by the petitioner that after the petitioner was detained, he had submitted his representation dated 07/01/04 at page 35 to the District Magistrate, Secretary to the Govt. of Gujarat, Addl. Secretary, Public Distribution, New Delhi, Secretary, Advisory Board, Gandhinagar. That in the said representation the petitioner had made it clear that the F.S.L. Report was received by him in English language and that he had absolutely no knowledge of English language. Therefore, gujarati translation or the version thereof may be provided to him, with a view to enable him to make an effective representation under Article 22(5) of the Constitution of India. That despite the said demand, the said translated version was not supplied, and therefore, the petitioner was deprived of availing a valuable constitutional right and therefore, the detention order is illegal.

4. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.P B Sheth learned AGP appeared on behalf of the respondents no.1 to 3. Ms.P J Davawala learned Addl. Standing Govt. Counsel has appeared on behalf of respondent no.4. I have heard the learned advocates for the parties and have perused the papers.

5. One of the grounds raised on behalf of the petitioner is that the petitioner was supplied with a copy of the F.S.L. Report which was in English language. That the petitioner was unaware of English language and therefore, he had requested the aforesaid authorities to provide him with the gujarati version thereof. That despite the said request, it was not complied with. Therefore, the petitioner was prevented from making an effective representation against his detention. In

support of the said argument, the learned advocate for the petitioner has drawn my attention to ground '(Q)' at page 20. If we read ground '(Q)' along with the aforesaid report, it is clear that the said gujarati version was called for and that it was not supplied to the detenu. Ms.P J Davawala learned Addl. Standing Govt. Counsel has submitted affidavit of the Under Secretary to the Union of India which does not reveal the above requirement.

6. The learned AGP has also produced an affidavit of the Dy.Secretary to the Govt. of Gujarati wherein also the reply to the above request is absent. We can also gather an affidavit of the detaining authority at page 58 which also does not carry the reply to the above requirement.

7. So the affidavits on record do not indicate that the above request of the petitioner has been complied with and that the gujarati version of the F.S.L. Report was supplied to the petitioner.

8. The petitioner has categorically stated in his representation that he is ignorant of English language. There is no reply to the said averment made by the petitioner in his representation referred to hereinabove. In that view of the matter, it is required to be accepted that the petitioner had no knowledge of English language. Therefore, it is clear that when the contents of the F.S.L. Report were not known to the petitioner, it was not possible on his part to submit an effective representation under Article 22(5) of the Constitution of India.

9. It is well settled that a right to make an effective representation under Article 22(5) of the Constitution is a valuable and effective remedy available to the petitioner for challenging the order of detention. When the said right could not be exercised by the petitioner on account of non-supply of the gujarati version of the F.S.L. Report, then in that event, consequent and subsequent continuation of the detention cannot be sustained in the eye of law. In other words, it would not be possible to continue the detention of the petitioner any further. Therefore, after hearing the learned advocates for the parties and after considering the above legal and factual aspects, this petition is required to be allowed.

10. For the foregoing reason, this petition is allowed. The impugned order of detention dated 26/12/03

passed by respondent no.2 against the detenu, is ordered to be quashed and set aside. Detenu, Mohamadbhai Ganibhai Saiyed, is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(D. P. Buch, J.)

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